

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 9, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Cecil Steward, Mary Bills-Strand and Tommy Taylor; (Greg Schwinn absent). Marvin Krout, Ray Hill, Brian Will, Becky Horner, Greg Czaplewski, Duncan Ross, Steve Henrichsen, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair Cecil Steward called the meeting to order and requested a motion approving the minutes for the regular meeting held June 25, 2003. Motion for approval made by Larson, seconded by Krieser. Motion carried 6-0: Duvall, Krieser, Larson, Steward, Bills-Strand and Taylor voting 'yes'; Carlson and Schwinn absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Krieser, Larson, Steward, Bills-Strand and Taylor; Schwinn absent.

The Consent Agenda consisted of the following items: **COUNTY SPECIAL PERMIT NO. 203, USE PERMIT NO. 123A, USE PERMIT NO. 151, SPECIAL PERMIT NO. 1672B, FINAL PLAT NO. 03009, COMPREHENSIVE PLAN CONFORMANCE NO. 03006 AND STREET AND ALLEY VACATION NO. 03008.**

Item No. 1.1, County Special Permit No. 203 was removed from the Consent Agenda and scheduled for separate public hearing. Bills-Strand moved to approve the remaining Consent Agenda, seconded by Taylor and carried 7-0: Carlson, Duvall, Krieser, Larson, Steward, Bills-Strand and Taylor voting 'yes'; Schwinn absent.

COUNTY SPECIAL PERMIT NO. 203
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT NO. 1ST STREET AND ASHLAND ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.
Proponents

1. Paul Reinhardt, 6750 Westown Parkway, Des Moines, IA, appeared on behalf of Nextel, the applicant, which also has offices in Omaha. This is an application for a 400' guy tower located in north Lancaster County to provide service to customers in Lancaster County and connecting coverage between Wahoo and existing sites in North Lincoln.

Steward inquired whether the tower is designed and planned for collocation. Reinhardt indicated that the tower is designed for three additional collocators, for a total of four carriers.

Opposition

1. Lee Quick, 334 County Road 22, Ceresco, owner of property in Sections 34 and 35, which is adjacent to this site, testified in opposition. The property is zoned AG and he is interested to know whether the location of this tower on AG property will have an impact on the property taxes. Is there money being paid for this tower? It will no longer be farm income, yet zoned AG. His adjacent property has a south slope to it and he has had all kinds of chances to sell a building site there with some pretty good income. If this tower is installed, he is wondering if that will impact his potential to sell off a building site. Quick has two phones in his farm trucks and the reception is working good so he does not see the need or benefit for that particular area. He also understands that his property is in a flight path of the Lincoln Airport and he was under the impression he would never be bothered with anything like this.

2. Keith Stewart, 2010 County Road A, Ceresco, also an adjacent landowner, testified in opposition with similar concerns. When Nextel was looking for a site they did talk with him and he was under the impression that his property (nearly identical in terms of flight path) would

not be a possible site because of the flight path. He has concerns about property values, the flight path and the tax base as it pertains to the school district. Will it have an impact on surrounding land values from a tax valuation standpoint?

Staff questions

Steward confirmed with staff that this special permit does not change the zoning. Brian Will of Planning staff confirmed that this special permit application does not change the zoning and is an allowed use by special permit in the AG district. Whether it changes the property for tax purposes would be an issue for the County Assessor. He did not know. Steward suggested that the property owners would have time to talk with the County Assessor before this application is heard by the County Board.

Steward asked staff to discuss the fall zone. Will stated that the fall zone according to the county zoning regulations is actually one-half the height of the tower. The site plan shows the setback from the property line to be the same as the height of the tower, so it is double the fall zone required by the regulations. The setback from the property line is about 400'. Generally, the ordinance would require a fall zone of 200' for a tower of this height.

With regard to the flight pattern, Will advised that this application was routed to the Airport Authority to comment the they had no objections. The applicant can further address their requirements for complying with the applicable FAA regulations.

Carlson noted that the conditions require accommodation of at least four additional collocations. The applicant testified that there would be three. Will understood from the application submittal that there would be the applicant and four additional carriers on this tower. As the conditions are written, they would have to accommodate a total of five carriers; however, that is in excess of the requirements of the ordinance. The ordinance only requires them to accommodate a total of three. Staff would not object to revising the condition to a total of four carriers; however, if they can accommodate five, that would be preferable.

Response by the Applicant

The applicant agreed to the total of five carriers because they do not do the structural design until they receive approval.

The applicant also stated that consultants are hired to run FAA studies prior to signing the lease. This tower has been determined to comply with the FAA regulations with an overall height of 420' including the antennae.

Duvall inquired about lighting on the tower. Reinhardt stated that Nextel uses the most conservative lighting that the FAA will allow. This tower will have a white light during the day and red medium intensity light at night.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Taylor moved approval, with conditions, seconded by Larson.

Bills-Strand suggested that the neighbors visit with the County Assessor to see if there are any tax implications between now and the County Board hearing.

Steward commented that it is not the role of the Planning Department staff nor the Planning Commission to engage in taxation matters and issues. Since there is a gap of time between now and when this application appears on the County Board agenda, the property owners will have time to talk with the County Assessor and there will be additional opportunity to testify at another public hearing before the County Board.

Motion for conditional approval carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

CHANGE OF ZONE NO. 3413
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT NO. 24TH AND DODGE/SUPERIOR STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted four letters in support.

Proponents

1. Carol Brown presented the application on behalf of the Landon's Neighborhood Association, which neighborhood has a household population of 290. She displayed pictures of the neighborhood showing the traffic difficulties at 21st & Superior; the entrance to Campbell School on Superior Street; Dodge Street showing double parking, illegal parking and stopping in the middle of the street to pick up the school children; illegal parking in the

Regalton neighborhood with cars hanging over the driveways; Dodge Street and the 23rd Street crossing.

Brown stated that the Landon's Neighborhood Association has a long history with this plan. It was agreed in the year 2000 that this parcel was to be an assisted living center and thus the reason Landon's did not oppose the R-4 zoning. Now, everything has changed—the assisted living center will not be built and they have been told there is no market for the day care. Brown urged that this neighborhood has been awaiting this day care center for years. Landon's and Regalton believe there is a need to protect this neighborhood from deterioration of quality of life. They have been battling increased traffic through their neighborhoods, with problems getting out onto the major arterials. These traffic issues have put a terrible strain on the quality of life in the neighborhood. This area was at one time the “quiet suburbs” with a tranquility and serenity that smaller neighborhoods should have.

Brown further observed that all the neighborhood has heard is that the plans submitted are all in conformance with the Comprehensive Plan. Is there not protection in the Comprehensive Plan that shields existing neighborhoods from encroachment of higher and more intensive development? Even the City Council agrees that there is a traffic problem in this neighborhood. Why do we have to add to those traffic problems? Is density so good surrounding a school? Density is not good when it revolves around the automobile. Brown then discussed the traffic numbers. The volumes on Superior Street are reaching 30,000 vehicles a day; 27th Street is at 30,188 vehicles a day; Fairfield Street is used by many and is at the volume of 4,521 vehicles per day (Fairfield is the street that this neighborhood has to take to get to the new library on 14th & Superior). The traffic problems are spilling over into another neighborhood.

Brown indicated that the neighborhoods would like to work with Regal. They have had two meetings with Regal but never once were there any concessions. If there was not a call for the elderly community why would Autumnwood be growing so rapidly? There is also the need for an Alzheimer facility. The R-4 density is not a benefit to this neighborhood.

Brown further pointed out that Traffic Engineering stated at the City Council meeting that the apartments that had been proposed would generate approximately 500 trips a day, and she believes that is a conservative estimate. This is such a small neighborhood and 500 trips would severely impact the residents. It is detrimental to the health and welfare of the residents and the children that go to Campbell. R-2 would fit the structure by allowing single family homes or approximately 25 duplex units. The neighborhood associations want this property to be developed. But they want a good plan, and they thought they had a good plan. Brown distributed copies of the site plan that the neighborhood had agreed upon. “Now the rug is pulled out from underneath us.”

2. Sheila Damon, 2435 Dodge Street, testified in support on behalf of the Regalton neighborhood. She confirmed the challenges that residents face with the city's Comprehensive Plan for high density residential neighborhoods. She displayed the existing layout of the neighborhood, showing that there is very little legal street parking, with just 25 on-street parking spaces. There is no allowance for street parking because of the density of the townhomes. When finished, the area will have 122 townhomes, increased from 94 units approved in the year 2000. She suggested a conservative estimate of 122 units generating 255 cars. At present, the neighborhood has 10 rentals and more are advertised for rent. Thus, she believes that 255 cars is a very conservative estimate. Renters always generate more cars. This area has only been allotted 25 parking spaces and no parking cutouts. In regard to adequate parking, Regal Building argues that, "...each lot will facilitate four cars off-street (2 in the garage and 2 in the driveway). The street is a public street and Regal does not control the street." What does that mean? Parking is occurring illegally at this time.

Damon advised that she has researched other neighborhood developments with townhomes, one with 30 units and 23 on-street parking spaces, plus a parking lot for 10 vehicles. None of these developments have the added pressure of having a school, yet they have far more parking available to the residents. The neighbors are concerned about the children walking to and from school with the traffic congestion and parking problems.

Damon urged that a parking lot needs to be added to the development. As a neighborhood group, Regalton proposed that the developer use the lot marked in yellow on the map. If no more parking is made available, what are the options? Changing the proposal from the year 2000 that recommended 94 units which was increased to 122 units has adversely affected this area. That is why she is supporting this downzone request.

3. Chris Gress, 2031 Hedge Apple Court, testified in support. He has lived in north Lincoln for almost 20 years and owns property in Regalton. Many years ago, he moved into a home on No. 25th Street and there was a cornfield in their back yard. A developer came and showed plans for the property behind their house. He had spent time with all of the neighbors. He had no concern with the one-story business buildings. Regal Building Systems seems to operate in a different way. They agreed to meet with some of the Landon's neighbors but requested not to invite the Regalton residents. The purpose for the exclusion was to keep the meeting small. Regal treated local residents as if they did not have a right to be at the meeting. Gress purchased rental property in Regalton because there was to be an assisted living facility next to them. Regal now says they do not see a need for assisted living which would include an Alzheimer unit. There are no Alzheimer units available in Lincoln and his wife's father had to be sent to Crete. The residents agreed years ago to the previous plan and the change to R-4 because the nearby residents wanted a day care and agreed with the assisted living facility plan. That plan has not come to life. Therefore, Gress believes that if there is no day care and no assisted living developed, the land should revert back to R-2 single family. He owns several rental properties in the Regalton neighborhood. He has a

difficult time finding parking to stop and talk with his tenants, and his tenants complain about inadequate parking and the school traffic. The combination of the increased traffic flow, the Campbell school traffic and overflow from Superior and 27th has already begun to cause traffic problems. Gress understands that the Planning Commission has marching orders for higher residential density; however, density can be secondary if the density will adversely affect the area. He believes the density will have an adverse effect.

Opposition

1. Marty Fortney, 2610 Park Blvd., Regal Building Systems, testified in opposition. In terms of communication, he stated that he initiated three meetings over the last three months: 1) with Regalton Association, 2) with Landon's and Regalton at Mrs. Brown's house, and 3) he sent a letter to all Regalton Association members to reclarify what they discussed. He believes there were 14-15 people at the meeting. He has had several meetings with individual neighbors, including Mr. Gress. With regard to the Alzheimer issue, he never said they were not needed. In fact, a summary done by an independent firm in Minnesota found that there is a need for 100 beds for Alzheimers in the year 2004 for the area north of O Street. He does own and operate an assisted living facility in Lincoln and he has talked with other administrators. Alzheimers is a "need" basis.

Fortney requested that the Commission not support this change of zone. He is concerned about the density issue and the use of the property.

2. Mark Hunzeker testified on behalf of **Regal Building Systems**. The staff report does an excellent job of analyzing this change of zone. It says very clearly that the Comprehensive Plan does not support a downzoning of this property. The Comprehensive Plan encourages mixed use neighborhoods and encourages transitions from commercial/office/industrial areas to single family areas, as this project would, if built. This is an appropriate location for R-4 zoning. However, the present time is not an economical time to go forward with a project of elderly and assisted living, but that does not necessarily mean that it will never occur. The fact that the City Council denied the change that was proposed did not repeal the special permit that is in place. There is at this time a special permit for the elderly and assisted living in place. Regal bought this property with that in place. They have a fairly significant investment based upon the existing zoning and a legitimate expectation of development under that zoning. The proposed plan for condominiums is not moving forward based on the City Council action. Hunzeker did point out, however, that Public Works has demonstrated very clearly that there is no traffic reason for downzoning this property. The traffic here is somewhat congested at peak hours, but if you go to any other arterial street in Lincoln, you'll find difficulty getting onto arterial streets from side streets at stop signs, and that is simply a fact of life. In fact, the traffic conditions around this school are much better than many of us have had to deal with in going to other schools. Hunzeker suggested that the traffic situation has been exaggerated.

Hunzeker also pointed out that he believes this to be spot zoning. This application would seek out the downzoning of this particular property to the detriment of this owner, presumably for some benefit ill-defined for others who are proposing it. It is reverse spot zoning.

In addition, Hunzeker suggested that the broader policy issue is: What kind of signal are you about to send to people who invest in property in Lincoln? If you downzone this property, the signal that is unmistakable is that if you own property here and you want to develop, don't ever plan anything beyond what you know you can build in the next year or two, because if there is a change in the market, the homeowners may come in and just downzone your project because you are changing it. Hunzeker urged that a developer cannot do a long term project and not expect to have some changes. If this change of zone is approved, Hunzeker strongly believes that there will be no more master planning of large projects. People won't want to do that. They will bring in small pieces at a time.

Furthermore, Hunzeker advised that the Regalton Association is not an applicant for this change of zone. The Regalton Association officers and directors are all owners of Regal Building Systems and they did not authorize or sign an application to downzone this property.

Staff questions

Steward noted the hypothetical neighborhood image included in the staff report as an example to back up part of the analysis which suggests that in this particular case it is not only the proposed uses, but it's also the proposed design that could or could not make a difference in a high density situation. Becky Horner responded, stating that the Comprehensive Plan lays out several principles for new neighborhoods such as this and a series of transitional uses. The image provided was to get an idea of how that might occur. Steward believes it is valid information in that direction because it seems that time after time the biggest debate in this forum is over the "edge" conditions between different uses, and time after time we find little or no sensitivity between one edge and the next adjacent use and how they should respect each other. He appreciated having this image provided.

Steward inquired whether there has been any additional traffic information provided since this proposal came forward. Is staff comfortable with the information about traffic? Horner stated that the traffic information was provided by the City Traffic Engineer and one additional piece was provided to the Council on the other application on Monday with respect to real traffic counts for Superior Street at this location, comparing it to other arterial situations near schools.

Response by the Applicant

Brown reminded the Commission that Mark Hunzeker does not live in this neighborhood. The traffic counts submitted at the Council were not around schools. She acknowledged that the application for this change of zone is by the Landon's Neighborhood Association and the

“Regalton residents”. She has not done this before so she may not have used the terms properly. There was a petition signed by the Regalton residents. She recited some additional traffic volumes: 21st Street coming out of Landon’s - 24 hour volume of 951 in 1997; Old Dairy Road - 24 hour volume of 1,222 eastbound (28 vehicles eastbound from 8:00-9:00 a.m. and 71 eastbound from 3:00-4:00 p.m.).

Brown then requested a delay. She wants to meet with Regal Builders and the city staff to find a good fit for this project--she does not want to close the doors. She wants Regal to address the concerns of the neighborhood and wants to work closely with the city.

Carlson suggested that one option would be to put it on pending. Brown does not want anything happening until they can figure out what is best for this area.

Larson suggested that if the application is placed on pending, it is under the control of the applicant. Brown does not want to accrue any more expense.

Rick Peo of City Law Department stated that it would be preferable to defer to a date certain so that readvertising and letter notification is not required. Carlson pointed out that putting this on pending would not prevent the developer from going forward with the previously approved plan. Steward suggested that putting it on pending and leaving the decision for taking it off pending in the hands of the applicant is not necessarily equitable when there are two parties with different interests. He agrees that a date certain would seem more appropriate.

Bills-Strand moved to defer for four weeks, with continued public hearing and administrative action scheduled for August 6, 2003, seconded by Taylor, and carried 6-1: Carlson, Duvall, Krieser, Bills-Strand, Taylor and Steward voting ‘yes’; Larson voting ‘no’; Schwinn absent.

PRE-EXISTING SPECIAL PERMIT NO. 29A
FOR AUTHORITY TO SELL ALCOHOLIC
BEVERAGES FOR CONSUMPTION OFF THE
PREMISES, ON PROPERTY GENERALLY
LOCATED AT S. FOLSOM AND W. PROSPECTOR COURT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter in opposition from the Yankee Hill Neighborhood Association.

Proponents

1. Peter Katt appeared on behalf of the applicant and owner, Duane Hartman Investments. This is an off-sale permit for an existing structure at 640 W. Prospector Court, lying immediately adjacent to the West Bypass. When purchased by his client, it was developed as N Street West and The Prospector, previously called the Dutton's Den. After that time, the city adopted special permit requirements with regard to the sale of alcohol both on- and off-premises. Under the special permit requirements, pre-existing uses predating the requirement for a special permit were not to be treated as nonconforming, but were to be treated as if a special permit were issued. However, that has not been a traditional practice in terms of formally asking for the issuance of special permits in these situations. Katt had believed that the issue was resolved.

In the spring of this year, the establishment on the east end of the building, Coaches Bar and Grill, the current holder of an on-sale premise license, asked the owner for permission to have off-sale. Coaches Bar and Grill applied for an off-sale liquor license that went through the process. As a part of that process, there was a significant degree of confusion within the city as to the status of special permits. Thanks to the cooperation with the Planning Department, Katt believes they have sorted it all out. Katt made a formal request for the special permits to be issued for the pre-existing use, which was the off-sale for the N Street West (which is now a convenience store), and a pre-existing special permit for on-sale for the entire building. Both of those permits have been issued.

This application involves a request to expand the pre-existing off-sale liquor license premise to the Coaches premise. Katt filed for administrative approval, as allowed by the ordinance; however, the Planning Director chose to deny that administrative request, believing that there was perhaps interest in the community. This is the formal application to expand the area of the special permit for the off-sale. The staff report does a nice job laying out the factors of the special permit. The applicant satisfies all the requirements of the special permit for the sale of off-sale alcohol.

Carlson pondered why the clientele that is in that area is not sufficiently served by purchasing off-sale in the a convenience store. Katt does not believe that is a question that is relevant to the determination of whether it is proper for the land use issue. Therefore, it is not a factor in the special permit determination. It is the nature of our economy that people are allowed to compete for business. The Nebraska Supreme Court has said that the sale of alcohol is no different than any other commercial business. The issues of necessity and convenience are issues that are properly raised on a determination as to whether or not a liquor license will be issued, but should not be a factor as to whether the property qualifies for a special permit. We

have a land use zoning issue, and then there is a liquor license issued by the state. In this case, the liquor license has been granted. The state has issued the liquor license for off-sale alcohol at the Coaches premise, but they cannot exercise that license because the land use special permit is not in effect.

Opposition

1. **David Asper**, 4301 S.W. 12th, Treasurer of the Yankee Hill Neighborhood Association, testified in opposition. There are sufficient opportunities for off-sale liquor sales at this location; there are more down the street; the Association does not believe it is needed. This is a family-oriented neighborhood; the neighborhood does not need the extra traffic and the other activities that go with this.

Staff questions

Carlson asked staff to respond to the applicant's testimony. Rick Peo of the City Law Department believes that the applicant is correct, i.e. that we cannot treat the sale of liquor differently. This is a land use consideration. Based on the staff report, this application satisfies the requirements in the ordinance. If there is no evidence contrary to the staff report, he suggested that the permit should be approved.

Response by the Applicant

Katt believes the staff report addresses the issues raised by the Association.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

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Larson moved to approve the staff recommendation of conditional approval, seconded by Duvall.

Carlson commented that he certainly finds the answers given to be compelling, so he will be supportive, but it seems a little bit odd, in general, that there is not criteria that should be appropriate for discussion in this determination. It seems odd that the issue of "adequately served" should not be a factor. On the other hand, Steward suggested that the Comprehensive Plan does not attempt to regulate moral principles.

Taylor stated that he will vote against the motion simply because of the concern of the neighborhood. He believes liquor is different than buying chewing gum or pop. In consideration of the neighborhood and the idea that the area is well-served, he believes there is a time and place for competition but he does not think the area is going to be improved by providing more liquor cheaper.

Motion for conditional approval carried 5-2: Carlson, Duvall, Larson, Bills-Strand and Steward voting 'yes'; Krieser and Taylor voting 'no'; Schwinn absent.

ANNEXATION NO. 03004;
CHANGE OF ZONE NO. 3387
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;
SPECIAL PERMIT NO. 1992, EDENTON WOODS
COMMUNITY UNIT PLAN;
and
PRELIMINARY PLAT NO. 02023, EDENTON WOODS,
ON PROPERTY GENERALLY LOCATED
AT ASHBROOK DRIVE AND NORTSHORE DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan and preliminary plat.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Caseyco**, the developer. This project had its origins with some sewer line extensions several years ago up the Beal Slough watershed along Pine Lake Road, through the Home Depot site and up to serve the Edenton South area, Parker's Landing. It is a 13-acre project and four acres is open space, consisting of a 46-unit mixed duplex/townhome and single family home project. There has been a lot of effort to preserve the drainageways and open space. The applicant has no objections to any of the conditions of approval on the community unit plan.

With regard to the preliminary plat conditions, Hunzeker noted that Condition #1.1.3 requires that no portion of any lot within this subdivision be within the 100-year storm elevation or the area subject to inundation by a dam breach. The dam breach study has been done and a lot was eliminated to deal with that. But the 100-year storm elevation as it affects the draw that runs down between the units running north and south between Northshore Drive does create a bit of a problem. Hunzeker pointed out that it is not a requirement of the subdivision ordinance or design standards to keep all of every lot out of the 100-year storm elevation. This is not a designated floodplain. We have calculated a 100-year storm water flow elevation, but virtually every lot in town in the 100-year storm event will have water running on

the lot because virtually every subdivision is designed for surface water drainage along lot lines. So there will always be some water in a 100-year storm on virtually every lot. Minimum building opening elevations have been provided on the plat. In order to eliminate any portion of any of these lots being under that 100-year storm elevation, they would have to either reduce the dimensions of the lots which will affect the buildable area, or they will have to do additional grading, which may affect the trees which they are working hard to preserve. This is an unnecessary requirement that is not required by the design standards and Hunzeker requested that Condition #1.1.3 be deleted.

Condition #1.1.5 requires that Bo Creek Bay and Bo Creek Court (the private roadway on the east edge) end in a 30' radius cul-de-sac. Again, Hunzeker pointed out that this is not a design standard requirement. Large vehicles cannot turn around in a 30' radius. This only affects 5 units on the south side and 7 units on the north side, so the distance to back up is very short. The additional concrete to do a 30' radius cul-de-sac simply chews up green space. Hunzeker believes that the turnarounds will be more than adequate for the residents. Therefore, he requested that Condition #1.1.5 also be deleted.

Bills-Strand noted that Bo Creek Court looks like it ends with a lot on the end of it. So basically it is almost like a private roadway that you have to back out of. Hunzeker stated that there is a turnaround at the end. In order to build a 30' radius cul-de-sac, they would have to pull Lot 17 further to the north. Hunzeker believes it is unnecessary and not required by the design standards. It is additional green space covered up that we want to keep. The roadway is a normal residential street width, 27' back of curb to back of curb, in an outlot that is 60' wide, which is the standard street right-of-way

Carlson asked Hunzeker to again discuss Condition #1.1.3. Hunzeker pointed to the map and suggested that if they are required to keep every square inch of every lot outside the 100-year storm water elevation, they will have to do one of two things: 1) add fill to the back of each of those lots (which possibly would require removal of trees to construct a retaining wall); or 2) shorten up those lots, which is possible under the CUP, but if you shorten up those lots, it affects the buildable area of the lot. The intent is to maintain the trees and keep as much room there as possible for the construction of nice homes.

Hunzeker further pointed out that the applicant must resubmit a grading and drainage plan to the satisfaction of Public Works to address some of the other issues. The applicant has provided for the minimum elevation on any building opening on the lots, and Hunzeker believes there is sufficient elevation difference between the private roadway and the back of those lots to allow walkout basements. In any event, they do have a minimum elevation set and it is included in the plat and will be passed onto the builders.

Larson asked whether Hunzeker was proposing to shorten Lots 15 and 16. Hunzeker stated that they do not want to change them at all. He believes that the proposal as submitted

contains the 100-year storm adequately. It may be the case that there will be a little bit of water along the rear property line during the 100 year storm event.

Steward suggested an alternative to the 30' radius, i.e. an L or something approaching a T configuration. It seems that would suggest that you lose Lot 16 or else it would cause a reconfiguration of the widths in order to get a pull-in/back-up condition. Hunzeker commented that the idea of the "hammerhead" turnarounds is to be able to drive in, back up and drive out. But you cannot do that with a truck and that is Steward's concern. Hunzeker suggested that for these distances, most of the time they are going to back out anyway.

There was no testimony in opposition.

Steward clarified that the two issues are the 100-year storm delineation area and the turnaround. With regard to Condition #1.1.3, Chad Blahak of Public Works & Utilities, agreed that there will be flow on any lot, but in this case it appeared by the calculations provided on the plan that the 100-year pool elevation behind the culvert was going to be settling on top of the lots, and that was the issue. However, given the situation and the green space and trees, and the fact that it is not a requirement of the design standards, Public Works would be willing to eliminate that condition.

With regard to Condition #1.1.5 and the 30' radius, Brian Will of Planning staff indicated that this requirement is a means to provide some method of turnaround for vehicles, including trafficking cars as well as emergency vehicles. Chad Blahak of Public Works further responded that there is not a specific design standard that references private roadways; however, the standards for public roadways that have this type of turnaround specifically state that no direct access will be taken from this type of hammerhead turnaround. Staff would prefer the 30' turnaround.

Steward had offered a possible alternative--rather than this very shallow hammerhead, that, if possible, at least one leg of the turn be made so that you could make a complete turn, back up and come back out the roadway. It probably means losing or decreasing Lot 16, and then below Lot 9, it would seem almost possible, depending on the grade elevation, without any affect on the property. He is looking for an alternative that gives them something more than taking 30'. Blahak suggested that they could make one leg longer but they still have to back up somewhere. If it's a truck, it will need a longer leg on the other side as well. The 30' radius gives you 60 feet across, so you would have the opportunity with a truck to maneuver around better with the 30' radius.

Carlson inquired about the elevation line that would potentially have water being stored on it. Blahak did not have the information available, but during the course of the review by Public Works, their flood elevation at that point put it back into the lots.

Carlson asked whether there has been any contact with the Pine Lake Neighborhood. Brian stated that they were notified and did not comment.

Response by the Applicant

Hunzeker does not believe the water is going to encroach very far onto those lots.

Rick Onnen of Engineering Design Consultants discussed the amount of water that will be on the lots and stated that the calculated flow through the channel in a 100 year event would run 2.0 to 2.5 feet deep. 10-12 feet of the rear of the lots would be affected. The contours shown on the map in the staff report are the existing contours.

With respect to the turnarounds, Hunzeker stated that it is not as if this is something that is impossible to meet. It is simply not a requirement and one which we would prefer not be made. With the minimum number of lots being served, he requested relief from Condition #1.1.5. It may be appropriate to require, and suspects that there may be a design standard change coming forward in the future.

Hunzeker also explained that the lots facing the private roadway will be single family patio homes. Thus, Steward commented that more than likely we are not looking at an extra automobile demand on each property.

ANNEXATION NO. 03004

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Bills-Strand moved approval, subject to an annexation agreement, seconded by Duvall and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

CHANGE OF ZONE NO. 3387

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Larson moved approval, seconded by Duvall and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

SPECIAL PERMIT NO. 1992

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Taylor moved to approve the staff recommendation of conditional approval, seconded by Bills-Strand and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

PRELIMINARY PLAT NO. 02023

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Duvall moved to approve the staff recommendation of conditional approval, with amendment deleting Condition #1.1.3 and Condition #1.1.5, seconded by Bills-Strand.

Taylor is not convinced that Condition #1.1.5 should be deleted.

Taylor made a motion to amend to retain Condition #1.1.5, seconded by Steward.

Bills-Strand is struggling with such a small turnaround. If you have 20 people over and 20 extra cars, how are they going to turn around adequately to get back out without a lot of congestion? She believes it might be a problem for the residents.

Larson suggested that rather than a 30' radius, he thinks they could construct L's there by moving Lot 17 north a little bit and putting the L to the west. He would prefer that rather than the 30' radius circle.

Carlson suggested the motion could be amended to provide turnarounds to the satisfaction of Public Works and the discussion could continue at City Council.

Larson moved to amend the motion to amend to provide adequate turnarounds at the end of Bo Creek Bay and Bo Creek Court to the satisfaction of Public Works, in replacement of the 30' radius, seconded by Bills-Strand.

This amendment was accepted by Taylor as his motion to amend Condition #1.1.5.

Steward stated that he is not so concerned about the convenience or inconvenience of the persons living on the private roadway. He is more concerned about the congestion at Northshore Drive with backing vehicles when many of the other property owners are trying to come to Northshore. It is irresponsible to not provide better opportunity for emergency vehicles.

Motion to amend Condition #1.1.5, to provide turnarounds at the ends of both Bo Creek Bay and Bo Creek Court to the satisfaction of the Public Works Department, carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

Main motion, as amended, deleting Condition #1.1.3 and amending Condition #1.1.5, carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

SPECIAL PERMIT NO. 1583A
TO ALLOW A COMMERCIAL PARKING LOT
IN A RESIDENTIAL DISTRICT
ON PROPERTY GENERALLY LOCATED
AT 17TH STREET AND GARFIELD STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Denial.

Ex Parte Communications: Larson reported that he had a discussion with the applicant. Carlson also knows the neighborhood association continues to work with the applicant.

Greg Czaplewski of Planning staff submitted a written request from the applicant requesting that this application be placed on the pending list while they continue to work with the neighborhood association. He also submitted a letter from the President of the Near South Neighborhood Association supporting the applicant's request to place on pending.

Larson moved to place on pending, seconded by Bills-Strand and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

Opposition

1. **Kevin Cypher**, 1800 Garfield, restated his position in opposition. If this application is approved, not only will his property value drop but his quality of living. It took him a year to find his home. He was surprised to find his home because it has everything he was looking for and more. He is happy living at 1800 Garfield. Please deny the special permit.

COMPREHENSIVE PLAN AMENDMENT NO. 03004
TO ADOPT THE SOUTHEAST UPPER SALT CREEK
WATERSHED MASTER PLAN.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Approval, as revised.

Ex Parte Communications: None.

Steve Henrichsen of Planning staff indicated that the city staff met yesterday with several property owners and continues to work on compromised language. Henrichsen requested an additional two-week deferral.

Larson moved to defer two weeks, with continued public hearing and administrative action scheduled for July 23, 2003, seconded by Bills-Strand and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

ANNEXATION NO. 03002;

CHANGE OF ZONE NO. 3411

**FROM AG AGRICULTURAL AND AGR AGRICULTURAL RESIDENTIAL
TO B-5 PLANNED REGIONAL BUSINESS DISTRICT;**

and

USE PERMIT NO. 150

ON PROPERTY GENERALLY LOCATED

AT SO. 91ST STREET AND HIGHWAY 2.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Approval of the annexation and change of zone, and conditional approval of the use permit.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter from the applicant requesting an additional deferral until August 20, 2003, for the purpose of continuing to meet with staff to resolve the issues in the conditions of approval.

Bills-Strand moved to defer, with continued public hearing and administrative action scheduled for August 20, 2003, seconded by Taylor and carried 7-0: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward voting 'yes'; Schwinn absent.

SPECIAL PERMIT NO. 2010,
PINE LAKE HEIGHTS SOUTH 8TH ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SO. 30TH STREET AND YANKEE HILL ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, Taylor and Steward; Schwinn absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **DaNay Kalkowski** appeared on behalf of **Ridge Development Company and Southview, Inc.**, the owners of the property. This is a special permit for a community unit plan for 65 townhome units. The property is being developed by Don Johnson Homes. The Johnson goal is to develop the property into affordable townhome units, with anticipated price range of \$119,000 to \$139,000. They are planning to target some first time home buyers. They have been working with staff, resulting in some proposed amendments to the conditions of approval, which Kalkowski believes are acceptable to staff. The proposed layout addresses most of the Planning and Public Works concerns and still allows the developer to keep some of the density to keep the units affordable.

Kalkowski submitted a motion to amend which has been reviewed by the staff. She proposed amendments to Condition #1.1.2 and #1.1.9, and to add Condition #2.8.

Carlson referred to the cul-de-sac, Outlot A, on Tularosa Lane, and inquired whether there is a pedestrian connection on Yankee Hill Road. Kalkowski's response was that they are working on a plan to show a sidewalk connection on Yankee Hill Road down to where the trail will be to the cul-de-sac. There will be a sidewalk connection on Tularosa Lane. The reason they came up with the 24' pavement width was because they felt it most important to get the space in the driveway so that people can park two vehicles in their driveway plus the two stalls in their garage without being on the sidewalk. Planning wanted the sidewalk back away from the curb so they are using some of the extra width of the roadway for additional space in the sidewalk. There was some question as to space available to park on the street between the driveways, but they felt it more important to have that space in the driveway. They do not have

any special parking proposed for guests to get them off the streets. They might be able to do that at the end of the cul-de-sac. The rationale for the long stretch was that it was more important to put the distance in the driveway. Kalkowski agreed that there will not be a lot of room for extra parking on the street.

Bills-Strand stated that she struggles with the narrow street and no space for off-street parking.

There was no testimony in opposition.

Staff questions

Steward asked whether the staff agrees with the proposed amendments. Brian Will of Planning staff answered in the affirmative. The staff has met with the applicant and reached agreement. Planning's concern was providing room between the sidewalk and the street. He does not believe it makes a lot of difference whether the street is 24' or 27' wide. With the number of driveways coming out on the street, there is not much opportunity to park. The staff wanted to get the vehicles in the driveways and have them available for the parking. If the 27' is required, there is not have enough room in the driveway to keep the cars out of the sidewalks.

Commissioner Taylor left at this point in the meeting.

Response by the Applicant

Kalkowski demonstrated where additional parking might be available. Bills-Strand was still looking for opportunities for more parking area. Can we build a little outlot for some parking?

Kalkowski suggested that it would be a tradeoff of green space for cement area. Steward pointed out that it is not a requirement by city standard, but there needs to be some consideration for the people living out there.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 9, 2003

Carlson moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Larson.

Steward commented that the Commission has reviewed two circumstances today of higher density with ostensibly more affordable residences, which create traffic issues. He believes there is a need to look at the standards in light of this desire for higher density. There are design solutions to these matters, and if those need to be part of our requirements, maybe we should consider some alternatives. Rear access is another potential solution rather than street access.

Bills-Strand agreed. She would like this investigated further because we are hearing from townhouse subdivisions that congestion is a real problem. For purposes of safety and to relieve congestion, it would be nice to make allowances when we allow higher density.

Motion for conditional approval, with amendments, carried 6-0: Carlson, Duvall, Larson, Krieser, Bills-Strand and Steward voting 'yes'; Schwinn and Taylor absent.

ITEMS NOT ON THE AGENDA:

July 9, 2003

Members present: Carlson, Duvall, Larson, Krieser, Bills-Strand, and Steward; Schwinn and Taylor absent.

Sheila Damon, Regalton resident, 2435 Dodge Street, expressed concern to the commission about how the Regalton Association is operating. There was a buffer of trees on No. 25th Street and there is a creek at least 12' deep with the bike trail going right to the creek. The residents have addressed this with Regal and his response was that he does not own the property that the creek or trees are on. Does this mean there is a city ordinance that provides the buffer between residential and the industrial area? Suddenly the buffer area has been removed and no one has been responsible for replacing it. The Regalton homeowners on No. 25th Street received a notice from Regal suggesting that they could buy trees at a discount and Regal would plant them; other residents were offered a refund on their association dues to use towards the purchase of a fence; the unit which borders Landon's was able to get permission to build a 6' privacy fence when others were told the covenants only allow a black chain-link fence. The developer is providing concessions and making exceptions to rules without other members' knowledge or approval.

Why bother having an association in the first place, if the covenants are rendered meaningless and the service provided to the residents is unsatisfactory? The Regalton residents met with Annette McRoy and she was going to ask a city inspector to view the area. There has been no progress on the situation. We do not know where to go for direction.

Steward advised that the circumstance of an association is not a condition of the Planning Commission's approval. He suggested three avenues to pursue: 1) Building & Safety, if something is not constructed or things have not happened according to what you thought was approved; 2) the city legal department; and 3) your own legal counsel.

There being no further business, the meeting was adjourned at 3:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 23, 2003.